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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2014-

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN
FOR THE LOS ANGELES REGION TO REVISE A TOTAL MAXIMUM DAILY LOAD FOR
TOXIC POLLUTANTS IN MARINA DEL REY HARBOR

WHEREAS:

1. On February 6, 2014, the Regional Water Quality Control Board for the Los Angeles Region (Los Angeles Water Board) adopted [Resolution No. R14-004](#), an amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan amendment), to revise a Total Maximum Daily Load (TMDL) for toxic pollutants in Marina del Rey Harbor.
2. The Los Angeles Water Board found that the analysis contained in the California Environmental Quality Act (CEQA) "Substitute Environmental Documents" for the proposed Basin Plan amendment, including the CEQA Checklist, the final staff report entitled "Reconsideration of the Total Maximum Daily Load for Toxic Pollutants in Marina del Rey Harbor," and the responses to comments complies with the State Water Board's regulations for the implementation of CEQA, as set forth in the California Code of Regulations, Title 23, sections 3775 through 3781. The State Water Board has reviewed the Substitute Environmental Documents for the Basin Plan amendment and concurs with the Los Angeles Water Board's findings and determinations, including the Statement of Overriding Considerations.
3. The Los Angeles Water Board also adopted the Basin Plan amendment pursuant to the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).
4. The Los Angeles Water Board found the Basin Plan amendment is consistent with the Statement of Policy with Respect to Maintaining High Quality of Waters in California ([State Water Board Resolution No. 68-16](#)) and the federal Antidegradation Policy (40 C.F.R. § 131.12), in that it does not allow degradation of water quality, but requires restoration of water quality and attainment of water quality standards.
5. The State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that regional water quality control boards may revise basin plans, and section 13242, which requires a program of implementation for achieving water quality objectives. The State Water Board also finds that the TMDL as reflected in the Basin Plan amendment is consistent with the requirements of section 303(d) of the federal Clean Water Act.

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6. Marina del Rey Harbor is a man-made harbor that was configured for recreational boating and is a water of the U.S., which supports a range of beneficial uses. Because of its configuration, the harbor area has minimal natural flushing and is significantly impacted by storm water runoff, existing landside uses, and marina activities. The Los Angeles Water Board has considered these factors and will continue to consider them in implementation of the TMDL.
7. The Department of Pesticide Regulation (DPR) selected a maximum allowable leach rate and made mitigation recommendations for copper antifouling paints per AB 425 in a memorandum dated January 30, 2014. DPR used a risk management approach such that the selected leach rate is protective of water quality in 75 percent of salt water marinas (i.e., marinas with up to 1,270 boats). DPR's maximum allowable leach rate is not designed to achieve the dissolved copper TMDL allocations necessary to meet water quality objectives in the largest marinas in California, including Marina del Rey Harbor. The DPR memorandum lists seven recommendations for mitigation measures in addition to the recommended leach rate. These mitigation measures in conjunction with use of currently registered products with low copper leach rates or non-toxic formulations and additional product reformulations, if necessary, are expected to reduce discharges of dissolved copper from boat hulls. The Los Angeles Water Board and DPR have committed to continued collaboration in addressing water quality impairments resulting from copper-based antifouling paints. The TMDL is consistent with and complements the efforts by DPR to address water quality impacts from the discharge of dissolved copper from antifouling paints.
8. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The TMDL must also receive approval from the U.S. Environmental Protection Agency (U.S. EPA).
9. A TMDL established through an amendment to a Basin Plan is not self-implementing. The TMDL for Toxic Pollutants in Marina del Rey Harbor has been established through such a Basin Plan amendment. The water boards implement pollutant allocations in TMDLs established as Basin Plan amendments through subsequent regulatory actions. It is during the development of a subsequent regulatory action that the Los Angeles Water Board will establish requirements specific to each individual, entity, or group of individuals to achieve the pollutant allocations. These requirements will take into consideration the requirements of the Porter-Cologne Water Quality Control Act, including consideration of the Basin Plan, the responsibility for discharges of pollutants by each individual, entity, or group of individuals, and the ability of each individual, entity, or group of individuals to control the discharge of the pollutant. The Los Angeles Water Board must provide notice and an opportunity to comment to regulated parties prior to adoption of a subsequent regulatory action. The subsequent regulatory action by the Los Angeles Water Board is subject to petition and review by the State Water Board.

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10. Los Angeles Water Board staff determined that minor, non-substantive changes to the language of the Basin Plan amendment were necessary to correct minor clerical errors and for clarification. The Los Angeles Water Board's Executive Officer made these minor non-substantive changes in a memorandum dated April 4, 2014 and September 5, 2014. The April 4, 2014 memorandum contains correcting language to two compliance options in the Implementation Schedule section of the Basin Plan amendment in order to correct a typographical error. The September 5, 2014 memorandum clarifies the terminology used in the assignment of the dissolved copper load allocations.

11. The term "responsible parties" in the TMDL is synonymous with the terms "dischargers accountable for" and "implementing party" as those terms are used in the Total Maximum Daily Load for Dissolved Copper in Shelter Island Yacht Basin, San Diego Bay (approved by the State Water Board on September 22, 2005) and the Richardson Bay Pathogens Total Maximum Daily Load (approved by the State Water Board on August 4, 2009), respectively. This TMDL is enacted under section 303(d) of the federal Clean Water Act. The assignment of pollutant allocations in a TMDL does not, in itself, impose any liability or other legal obligations on those named. No cause of action exists under the Clean Water Act that would enable third-party lawsuits based on the TMDL against the County of Los Angeles, boat owners or anchorages for discharges of copper from boat hulls. The identification of parties in the TMDL does not assign liability for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or under tort law. Further, future regulatory actions for dissolved copper load allocations would establish regulatory requirements to address impacts to the water column – not requirements for remediation of contaminated sediment from historical discharges. As a result, the dissolved copper load allocations assigned to the anchorages, individual boat owners, and the County of Los Angeles are not comparable to environmental liabilities established under CERCLA.

12. The Los Angeles Water Board has committed to working with interested stakeholders and to reconsider the TMDL in response to studies in Marina del Rey Harbor and other pertinent information.

13. There are a number of U.S. EPA approved tools that can be utilized to derive site-specific water quality objectives. The Los Angeles Water Board will consider revisions to the existing dissolved copper water quality objectives and corresponding TMDL numeric targets that are developed using the biotic ligand model (BLM) if it is fully-approved by the U.S. EPA for use in marine waters during the TMDL implementation period. Following the County of Los Angeles' submittal of the dissolved copper site-specific objective study for the marina, the Los Angeles Water Board will consider site-specific objectives for Marina del Rey Harbor that, if adopted by the Los Angeles Water Board, and approved by the State Water Board, Office of Administrative Law and U.S. EPA, will supersede the applicable dissolved copper criterion in 40 C.F.R. section 131.38 ("California Toxics Rule") as the enforceable water quality standard.

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the Basin Plan amendment adopted under Los Angeles Water Board Resolution No. R14-004.
2. Authorizes and directs the Executive Director or designee to submit the Basin Plan amendment adopted under Los Angeles Water Board Resolution No. R14-004 to OAL for approval of the regulatory provisions and to U.S. EPA for approval of the TMDL.
3. Directs the Los Angeles Water Board to review progress on TMDL implementation at regular intervals.
4. Directs the Executive Officer of the Los Angeles Water Board to present to the Los Angeles Water Board for its consideration revisions as appropriate or necessary to the Load Allocations, Waste Load Allocations, and/or compliance deadlines within the TMDL ~~as appropriate or necessary~~ within 18 months of receipt of studies and other pertinent information.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 9, 2014.

Jeanine Townsend
Clerk to the Board